



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 19-02544  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Adrienne M. Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

06/02/2020

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on July 28, 2018. On October 10, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant received the SOR on October 30, 2019; answered it in an undated document; and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on February 11, 2020, and sent a

complete copy of the file of relevant material (FORM) to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on February 20, 2020, and submitted a multi-page document, which was marked as Applicant's Exhibit (AX) A and admitted in evidence without objection from Department Counsel. The case was assigned to me on May 12, 2020.

The FORM included a summary of an interview of Applicant conducted by a security investigator in January 2019. (FORM Item 3.) The interview summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the interview summary; make any corrections, additions, deletions or updates; or object to consideration of the interview summary on the ground that it was not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the interview summary, nor did he object to it. I conclude that he waived any objections to the interview summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.b and 1.d-1.i and denied the allegations in SOR ¶¶ 1.a and 1.c. I have treated his admission of SOR ¶ 1.e as a denial for the reasons set out below. His admissions in his answer are incorporated in my findings of fact.

Applicant is a 32-year-old technician employed by a defense contractor. He was unemployed from December 2007 to February 2009. He served on active duty in the U.S. Marine Corps from February 2009 to February 2013 and received an honorable discharge. He was unemployed from February 2013 to September 2015, while attending school and being financially supported by the GI Bill. He was employed in the private sector from September 2015 until he was hired by his current employer in January 2018. He received a security clearance in July 2009, while serving in the U.S. Marine Corps.

Applicant married in July 2012 and divorced in January 2015. He has a five-year-old child. The record does not reflect whether he is obligated to pay child support.

The SOR alleges nine delinquent debts totaling about \$31,977. The debts are reflected in credit reports from February 2020, August 2019, and October 2018. (FORM Items 4, 5, and 6.) The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: car loan charged off for \$4,606.** This loan was for a car that Applicant purchased in May 2014. The car was a total loss after an accident in 2016. Applicant believed that his auto insurance would pay off the loan, but the amount paid by the insurance company apparently was less than the balance on the loan. During the January 2019 security interview, Applicant admitted that he had received some collection

attempts, but he attributed these attempts to the insurance company's delay in paying off the loan. (FORM Item 3 at 4.) He settled the remaining balance on the car loan for less than the full amount in March 2020. (AX A at 1.)

**SOR ¶ 1.b: telecommunication bill charged off for \$211.** This debt was for unreturned equipment. It was charged off in April 2017. Applicant paid it in full in February 2020. (AX A at 21.)

**SOR ¶ 1.c: car loan placed for collection of \$4,606.** This debt is a duplicate of the debt alleged in SOR ¶ 1.a. The debt alleged in SOR ¶ 1.a is for the same amount to the same creditor, and the nine-digit account number alleged in SOR ¶ 1.a is the same as the first nine digits in the account number alleged in SOR ¶ 1.c.

**SOR ¶ 1.d: installment sales contract charged off for \$1,260.** This account was opened in November 2009, while Applicant was on active duty in the Marine Corps, and the debt was charged off in June 2012. In Applicant's answer to the SOR, he stated that this debt was settled. The October 2018 credit report reflects that the account is closed but does not indicate that it was resolved. (FORM Item 4 at 4.) The debt is not reflected in the August 2019 and February 2020 credit reports.

**SOR ¶ 1.e: jewelry store account placed for collection of \$9,934.** In his answer to the SOR, Applicant admitted the debt but contended that it was for jewelry he ordered but never received. In his answer to the SOR, he stated that he had contacted the creditor in an effort to settle the debt. The October 2018 credit report reflected that the debt was disputed. In his response to the FORM, he included a press release from the state attorney general announcing the conviction of the owner of the jewelry store for felony conspiracy to engage in illegal financing and debt-collection practices targeting sailors and marines. The owner of the jewelry store was sentenced to 90 days in jail and three years of felony probation, ordered to pay restitution to victims, and required to cancel the outstanding debts incurred by victims. (AX A at 42-44.)

**SOR ¶ 1.f: collection account for \$7,712.** This debt was for early termination of a lease. During his security interview in January 2019, Applicant told the investigator that he was uncomfortable living in an apartment after he learned that a previous occupant had died there. He requested that he be allowed to move into another apartment in the same complex. When his request was denied, he moved out of the apartment six months before the end of the lease term and stopped paying rent. (FORM Item 3 at 4.) In Applicant's answer to the SOR, he stated that the debt was resolved, but he submitted no documentary evidence to support his claim. Applicant received an offer in 2019 to settle the debt for \$3,900, payable by May 7, 2019. (AX A at 25.) However, he submitted no evidence that he paid the agreed amount by the due date. The debt is not reflected in a credit report dated January 30, 2020, submitted by Applicant in response to the FORM, or in the credit report dated February 7, 2020, included in the FORM. (FORM Item 4; AX A at 29-41.)

**SOR ¶ 1.g: telecommunications account placed for collection of \$2,133.** This debt, a cellphone account, was placed for collection in March 2017. It was settled for less than the full amount in March 2020. (AX A at 22.)

**SOR ¶ 1.h: collection account for \$1,395.** This debt was referred for collection in July 2018. The nature of the debt is not reflected in the record. In Applicant's answer, he stated that the debt was paid in full. When he was interviewed by a security investigator in January 2019, he told the investigator that he paid the debt in November 2018. He did not provide documentary evidence of payment in his answer to the SOR or his response to the FORM. The debt is reflected in the October 2018 credit report (FORM Item 6 at 9), but it is not reflected in the credit reports from August 2019 and February 2020 (FORM Items 5 and 6), nor is it reflected in the February 2020 credit report submitted by Applicant in his response to the FORM. (AX A at 29-41.)

**SOR ¶ 1.i: insurance debt placed for collection of \$120.** In the January 2019 security interview, Applicant admitted that this debt was referred for collection in 2017. (FORM Item 3 at 4.) It was paid in full in March 2020. (AX A at 20.)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865

§ 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

SOR ¶¶ 1.a and 1.c allege the same debt. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I have resolved SOR ¶ 1.c in Applicant's favor.

Applicant's admissions and the documentary evidence in the FORM establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is established for the debt alleged in SOR ¶ 1.e, because the creditor's fraudulent conduct was a condition beyond his control, and he acted responsibly by contacting the creditor and filing a dispute with the credit bureau. However, this mitigating condition is not established for the other debts alleged in the SOR. Applicant's unemployment from December 2007 to February 2009 occurred before any of the debts alleged in the SOR were incurred. His unemployment from February 2013 to September 2015 was a voluntary choice and not a condition beyond his control. The car accident that was the cause of the debt alleged in SOR ¶ 1.a could have been a condition largely beyond his control, depending on the circumstances and the degree to which Applicant

was at fault. However, he has not established that it was a condition largely beyond his control, because he provided no information about the circumstances in which it occurred.

AG ¶ 20(c) is not established. Applicant submitted no evidence of financial counseling, and his financial situation is not yet under control.

AG ¶ 20(d) is not established. Although Applicant has been continuously employed since September 2015, he did not resolve the debt alleged in SOR ¶ 1.b until February 2020, and he did not resolve the debts alleged in SOR ¶¶ 1.a, 1.g, and 1.i until March 2020, after he was questioned about his debts by a security investigator in January 2019 and received the SOR in October 2019. Payment of debts under pressure to obtain or retain a security clearance does not constitute “good faith.” An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018). Applicant claimed that he had resolved the debts alleged in SOR ¶¶ 1.d and 1.h, but he provided no documentation supporting his claim. The debts alleged in SOR ¶¶ 1.d and 1.h are not reflected in recent credit reports. However, the fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. Debts may fall off credit reports for various reasons, including the passage of time. See ISCR Case No. 18-01250 at 2 (App. Bd. Feb. 13, 2019). Applicant submitted evidence that he received a settlement offer for the debt alleged in SOR ¶ 1.f, but he submitted no evidence that he accepted the offer and paid the agreed amount. When an applicant claims to have resolved a debt, he or she is expected to present documentary evidence supporting that claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(e) is established for the debt alleged in SOR ¶ 1.e. He admitted this debt in his answer to the SOR but stated that he had not received the items he had ordered. He disputed the debt, and he provided evidence of fraudulent conduct by the creditor in his response to the FORM. This mitigating condition is not established for the other debts alleged in the SOR. Applicant submitted no evidence that he disputed any of the debts with the original creditor, the collection agencies, or the credit-reporting bureaus.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the

individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. I have considered Applicant's honorable service in the U.S. Marine Corps and his recent efforts to resolve his delinquent debts. He has resolved several of his delinquent debts, but he has not yet established a track record of financial responsibility. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.c and 1.e: For Applicant

Subparagraphs 1.b, 1.d, and 1.f-1.i: Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge